2008 LEGISLATION

BILLS ENACTED BY THE 2008 UTAH LEGISLATURE THAT IMPACT EMINENT DOMAIN, LAND USE, OR LAND DEVELOPMENT

Please Note: *The information presented here summarizes some of the bills enacted the by the 2008 Utah Legislature that impact eminent domain, land use, and land development laws. This is informational only, and should not be considered an analysis of how these legislative changes should be interpreted or administered. After these bills take effect, the actual text of the laws should be consulted.*

House Bills

House Bill 40: Safe Drinking Water Revisions

Sections amended:	Section enacted:
§ 17-41-402	§ 19-4-113
§ 19-4-102	

This bill clarifies § 17-41-402, by adding language restricting how a political subdivision (city or county) may change ordinances which would impact structures or practices carried out within properly-established agricultural or industrial protection areas. An ordinance which would "unreasonably" restrict a structure or practice may not be enacted unless the ordinance bears a direct relationship to public health or safety. Furthermore, a change in a zoning designation or regulation affecting land within a protection area may not be enacted unless all landowners affected by the change give written approval. An exemption to that rule, for industrial protection areas only, is enacted in § 19-4-113.

Section 19-4-113 provides that, along with other regulations intended to protect water sources, a local government may designate "drinking water source protection zones," and may enact zoning regulations designed to protect drinking water sources, included ground water sources. The new section provides details about how a protection zone may be enacted, and the requirements for such a zone.

Section 19-4-102 is amended and renumbered to include new definitions required for the new provisions.

House Bill 48: Mobile Home Owners' Rights

Section amended:	Section enacted:
§ 57-16-6	§ 57-16-18

This bill provides that the owner of a mobile home park must allow residents at least nine months to vacate after a lease is terminated because of a proposed change in land use or condemnation of the park's property. The nine-month period does not apply if a resident is evicted for cause.

The bill also provides that park residents are entitled to notice of any hearing before a governmental agency where the proposed land use change or condemnation is discussed. These notices are to be sent by the park's owner.

Finally, the bill prohibits local governments from enacting "any ordinance governing the closure of a mobile home park."

House Bill 153: Impact Fees Amendments

Sections amended:

§ 11-36-102
§ 11-36-201
§ 11-36-202

This bill adds a notice requirement when a capital facilities plan (the basis for calculating impact fees) are enacted—or amended (Note that amendments to existing capital facilities plans are added). Under the new language, notice of a capital facilities plan enactment or amendment must be sent to the following entities: the Utah Home Builders Association, the Utah Association of Realtors, and the Utah Chapter of the Associated General Contractors of America. The

statute's existing language also provides that notice be sent to certain other entities.

In addition, a political subdivision or private entity imposing an impact fee must provide public notice, along with notice to the three entities named above, when a written analysis of a proposed fee is considered. The public, and the entities named above may "participate in the preparation of the written analysis." Finally, prior to adopting an impact fee, the political subdivision must submit a copy of its analysis, as well as a summary of the analysis, to each public library within the subdivision's boundaries, and also send copies to the three entities named above.

At least 14 days prior to a public hearing where an impact fee is enacted, the political subdivision must provide public notice, and again notify the three entities identified above, plus other notice as provided in the statute. The bill imposes the notice requirements on all political subdivisions, removing language that restricted the notice to subdivisions located in first and second class counties.

The bill also adds language to § 11-36-202(2), providing that an impact fee ordinance allows a developer to receive a credit against or proportionate reimbursement for an impact fee for the value of land dedication or construction to system improvements.

Finally, the bill adds language that no impact fee enactment may take effect until 90 days after it is enacted. There are also several "technical" or "clean-up" changes intended to clarify the language of the statutes.

House Bill 164: Town Incorporation Process Amendments

Sections amended:

§ 10-2-109
§ 10-2-125
§ 20A-1-203
§ 20A-1-204

This bill attempts to salvage the mess that resulted from the "automatic town" provisions enacted by the 2007 Legislature. It eliminates the "qualifying petition" provisions, and requires that a proposed town must be subject to a feasibility study, and that town officers must be elected rather than appointed by the incorporators. The new provisions will not be imposed retroactively. The bill also adds language to the Elections Code (Title 20A), to include changes made necessary by the bill's language.

House Bill 177: County and Municipal Land Use Regulation of Potential Geologic Hazard Areas

Sections amended:

§ 10-9a-103
§ 10-9a-505
§ 10-9a-603
§ 10-9a-703
§ 17-27a-103
§ 17-27a-505
§ 17-27a-603
§ 17-27a-703

This bill addresses concerns about local governments imposing conditions related to geologic hazards. It adds definitions for "flood plain," "geologic hazard," and "potential geologic hazard." The two definition sections, 10-9a-103 and 17-27a-103, are also renumbered.

Sections 10-9a-505 and 17-27a-505 are amended to include a new subsection (1)(c), which authorizes local governments to adopt ordinances regulating land use or development in flood plains or potential geologic hazard areas. The regulations adopted should "protect life" and prevent "substantial" loss or damage to real property. Local governments are not required to enact these ordinances. There is a minor change in the 603 sections, reflecting an updated cross reference made necessary because of renumbering in the definitions.

Sections 10-9a-703 and 17-27a-703 are amended to include a new subsection (2), which addresses appeals of a local government's decision which administers or interprets an geologic hazard ordinance. A developer may appeal a decision, and may request that a panel of qualified experts serve as the appeal authority to review that decision. Unless agreed otherwise, the panel will consist of one expert designated by the local government, one designated by the developer, and the third chosen by the other two. The developer and municipality shall evenly split the costs for the services of these experts.

It is worth noting that the new language states that the panel of experts will serve as the appeal authority, presumably with power to uphold or overturn a local government's decision.

House Bill 221: Agriculture and Industrial Protection Area Amendments

Sections amended:

§ 10-9a-403
§ 17-27a-403
§ 17-41-306
§ 17-41-406

This bill amends sections 10-9a-403 and 17-27a-403, by adding language that requires identification and consideration of any agricultural protection areas when a general plan is adopted or amended. In addition, local governments are to avoid proposing land uses within a protection area that is inconsistent or detrimental to agricultural uses.

Section 17-41-306 is amended by making some language changes in provisions regarding removal of land from an agricultural or industrial protection area, and by prohibiting counties from charging a fee in connection with a petition to remove land from an agricultural or industrial protection area.

Finally, section 17-41-406 is amended by adding a new subsection (3), which requires state agencies proposing transportation corridors to consider whether the corridor will cross agricultural protection areas, and whether the proposed transportation use will interfere with agricultural activities. State agencies should also consider alternatives that would eliminate or minimize impacts on agriculture.

House Bill 323: Eminent Domain Amendments

Section amended:

§ 78B-6-501

This bill restricts state and local agencies from using eminent domain authority to acquire property to be used primarily as a foot path, equestrian trail, bike path, or walkway. This restriction extends to parklands where the primary purpose is trails or paths for hiking, walking, cycling, or horse riding.

Senate Bills

Senate Bill 53: Use of Initiative and Referendum for Administrative Land Use and Zoning Matters

Sections amended:

§ 20A-7-401

This bill prohibits referenda to adopt or amend a land use ordinance. It also prevents a referendum on land use ordinances enacted by local governments. According to the bill's sponsor, this bill is meant to align the Utah Code with recent Appellate Court Rulings.

Senate Bill 156: Utah Relocation Assistance Act Amendments

Sections amended:

§ 57-12-4

This bill amends the Utah Relocation Assistance Act by authorizing agencies to provide to businesses a relocation benefit that is greater than the benefit authorized by federal law. It also adds an eligibility requirement that displaced persons must be eligible to receive relocation under federal statutes or regulations.

Senate Bill 196: County and Municipal Land Use Amendments

Sections amended:

§ 10-9a-103
§ 10-9a-509
§ 10-9a-509.5
§ 17-27a-103
§ 17-27a-508
§ 17-27a-509.5

Sections enacted:

§ 10-9a-604.5
§ 17-27a-604.5

This bill regulates how and when local governments may use development or subdivision bonds to guarantee completion of public improvements.

The bill adds three definitions to LUDMA, and renumbers Section 103: First, "Development Activity" is defined as any construction or change in the use of land that creates additional demand on public facilities. Second, "Improvement Assurance" is defined as a surety, bond, letter of credit, cash, or other security meant to guaranty completion of an improvement, and is required as a condition for approval of a subdivision or other development activity. Finally, "Improvement Assurance Warranty" is defined as a promise that the materials and workmanship of improvements will comply with building standards, and will not fail in "any material respect" within a warranty period.

Sections 10-9a-509 and 17-27a-508 are amended to add "subdivision plat" along with "land use permit." The sections are otherwise unchanged, and still state that a local government may only impose conditions that are expressed in the permit (or subdivision plat), documents upon which approval was based, or in state law or local ordinances. New language is added, however, which includes the phrase "the written record evidencing approval" to the list of sources for conditions that may be validly approved.

Sections 10-9a-509.5 and 17-27a-509.5 are amended by adding a new subsection (3) to govern Improvement Assurances. The new language requires that during the period that new improvements are under warranty, a local government must act with reasonable diligence to determine whether required subdivision improvements meets the standards adopted by the local government. An applicant may request a decision on improvements, and the local government must act within 15 days. If the improvements are rejected, the local government must state its reasons "comprehensively and with specificity."

Finally, the new sections, 10-9a-604.5 and 17-27a-604.5, provide that a local land use authority may allow plat recording or other development activity to proceed if the local government requires some sort of "improvement assurance" and if "objective inspection standards" have been established. The new sections provide that a local government may require a warranty period of up to one-year after final inspection. Under certain conditions, the warranty period may be as much as two years. A local government is also required to allow partial release the improvement assurance "if appropriate."

Senate Bill 208: Transportation Corridor Preservation Amendments

Sections amended:

§ 10-9a-509
§ 17-27a-508
§ 72-5-403

This bill provides that the Utah Department of Transportation may designate "High Priority Transportation Corridors" and preserve those corridors from development. UDOT must notify cities and counties of High Priority Transportation Corridors located within their boundaries. If a land use application is submitted that involves land located in one of these corridors, counties and municipalities must notify UDOT before approving the application.

Senate Bill 286: Transportation and Transit Amendments

Sections amended:	Section enacted:
§ 10-9a-305	§ 63I-2-217
§ 17-27a-305	
§ 53A-20-104	
§ 63-55b-110	

This bill exempts certain transportation facilities from regulation by local land use authorities in counties of the first class (including municipalities located in such counties). Subsection (2) in both the municipal and county statutes are amended to reflect this exemption. The facilities affected are a "rail fixed guideway public transit facility that extends across two or more counties;" structures such as platforms, terminals or stations that serve such facilities; utility lines, roadways that serve such facilities; or other "auxiliary facilities," which were not defined. The exemption only extends to property "necessary" for construction or operation, and no further. The bill also prohibits interlocal agreements that purport to authorize local approval over such these facilities.

The amendments to § 53A-20-104 update references to the two local government sections, which were renumbered due to the amendment. Section 63-55b-110 is amended to include a sunset provision for § 10-9a-305(2), and § 63I-2-217 is enacted to provide a sunset provision for § 17-27a-305(2). The sunset dates for both subsections is July 1, 2013.
